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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,070	03/23/2004	Jogesh Warrior	10040054-1	2645

7590 03/19/2007

AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
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EXAMINER	
SUGLO, JANET L	
ART UNIT	PAPER NUMBER
2857	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/807,070	WARRIOR ET AL.	
	Examiner	Art Unit	
	Janet Suglo	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *25-28* is/are allowed.

6)☒ Claim(s) *1 and 16* is/are rejected.

7)☐ Claim(s) ~~*1*~~*-15 and 17-24* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The action is responsive to the Amendment filed on February 23, 2007. Claims 1-28 are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. **Claim 1** is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of copending Application No. 10/876,048. Although the conflicting claims are not identical, they are not patentably distinct from each other because when information is routed, as claimed in claim 1 of the instant application, the nodes must inherently be selected, as claimed in claim 1 of

Application No. 10/876,048. Therefore there is no functional difference between claim 1 of the instant application and claim 5 of Application No. 10/876,048.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. **Claim 16** is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of copending Application No. 10/876,048. Although the conflicting claims are not identical, they are not patentably distinct from each other because when information is routed, as claimed in claim 16 of the instant application, the nodes must inherently be selected, as claimed in claim 15 of Application No. 10/876,048. Therefore there is no functional difference between claim 1 of the instant application and claim 15 of Application No. 10/876,048.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

5. Claims 2-15 and 17-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 25-28 are allowed over prior art. The following is a statement of reasons for the indication of allowable subject matter: Detecting access attempts by one or several mobile devices to multiple nodes with a sensor net, determining probabilities of

future access, distributing this information, and further routing measurement data is not found, taught or fairly suggested in the prior art of record.

Response to Arguments

7. Applicant's arguments, filed February 23, 2007 (see pages 7-10), with respect to rejections under 35 U.S.C. 112, second paragraph have been fully considered and are persuasive. The 35 U.S.C. 112, second paragraph rejection of claims 1-28 has been withdrawn. It is noted that the reason for withdrawal is based upon *Ex parte Erlich*, 3 USPQ2d 1011, which states that:

> The examiner has alleged that these claims are incomplete since they do not recite any steps. Appellants argue in the supplemental appeal brief that these claims need not specifically outline any process steps, citing Ex parte Bull, 117 USPQ 302 (PTO Bd. App., 1957). We agree with the examiner that appellants' reliance upon Bull is misplaced because the claims under consideration in the prior appeal did recite active, positive steps such as "bringing together . . .," "providing," and "maintaining." Here, claims 6 and 7 merely recite a use without any active, positive steps delimiting how this use is actually practiced. While we agree with appellants that the claims need not recite all of the operating details, we do find that a method claim should at least recite a positive, active step(s) so that the claim will "set out and circumscribe a particular area with a reasonable degree of precision and particularity," In re Moore , 58 CCPA 1042, 439 F.2d 1232 , 169 USPQ 236 (1971), and make it clear what subject matter these claims encompass, In re Hammack , 57 CCPA 1225, 1230, 427 F.2d 1378, 1382, 166 USPQ 204, 208 (1970), as well as making clear the subject matter from which others would be precluded, In re Hammack, supra , 57 CCPA at 1231, 427 F.2d at 1382, 166 USPQ at 208. Without reciting any active, positive steps, claims 6 and 7 fail to achieve these purposes. This rejection is affirmed.

Thus *Erlich* asserts that when other positive, active steps are recited, then each operating detail need not be described in the claim. Although Applicant's claimed steps of "utilizing" do not within themselves recite further positive, active steps, the claim as a whole does provide positive, active steps (e.g., detecting, calculating, communicating).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Suglo whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janet L Suglo
March 14, 2007

MARC S. HOFF
SUPERVISORY PATENT EXAMINER
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